

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONALD R. HUNT,

Petitioner,

V.

JEFFREY A. UTTECHT,

Respondent.

CASE NO. C17-1827-RSM-BAT

**ORDER DIRECTING PETITIONER
TO FILE AN AMENDED PETITION**

Petitioner Donald R. Hunt is a Washington state prisoner who filed a petition for habeas corpus under 28 U.S.C. § 2241 in the Eastern District of Washington, where he is confined. Dkt. 1. That court construed the petition as a petition for habeas corpus under 28 U.S.C. § 2254 and transferred the petition to this court, as petitioner is confined pursuant to a judgment and sentence of the Snohomish County Superior Court. Dkt. 8. This court appointed the Federal Public Defender to represent petitioner and directed service of the petition on the respondent. Dkt. 13.

The respondent moved to transfer the petition to the Ninth Circuit pursuant to 28 U.S.C. § 2244(b) and Circuit Rule 22-3(a), or, in the alternative, to dismiss the petition, asserting that the petition is a second or successive petition. Dkt. 20. In response, petitioner stated that one of his two claims, concerning alleged violations of the Interstate Agreement on Detainers, should be

1 voluntarily dismissed because it can arguably be characterized as being cognizable under § 2254
2 and therefore subject to § 2244(b). Dkt. 22. He asserted that his remaining claim, concerning the
3 computation of credits for good time against his sentence, is properly governed under § 2241 and
4 therefore outside the purview of § 2244(b). *Id.*

5 In light of petitioner's statement that his claim that could be cognizable under § 2254
6 should be voluntarily dismissed, the Court finds that it would be premature to rule on
7 respondent's motion to transfer or dismiss the petition. If the petition contains no claim under
8 § 2254, it may be that respondent's motion is moot, or that respondent would no longer choose to
9 seek transfer to the Ninth Circuit or dismissal of the petition. Accordingly, the Court now directs
10 petitioner to file an amended petition setting forth the claim he intends to proceed with in this
11 petition.

12 Petitioner's amended petition shall be filed by **April 26, 2018**. Within **30 days** of the date
13 petitioner files his amended petition, respondent shall file and serve an answer in accordance
14 with Rule 5 of the Rules Governing Section 2254 Cases in United States District Courts and with
15 the requirements set forth in this court's previous order directing service (Dkt. 13).

16 In addition, the elimination of the claim under § 2254 brings back into question the
17 proper venue for this petition. As part of the amended petition and the response thereto, the
18 parties are directed to address the issue of venue and whether they waive any objections to venue
19 in this district for consideration of petitioner's claim under § 2241.

20 DATED this 27th day of March, 2018.

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23 BRIAN A. TSUCHIDA
United States Magistrate Judge